

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

6:69-cv-07941-BB

RIO CHAMA STREAM SYSTEM
Section 3, Rio Cebolla

Subfile Nos. CHCB-005-0004

SUBFILE ORDER

THIS MATTER is before the Court following an evidentiary hearing before the Special Master on October 29, 2008, in connection with Defendant Mario R. Martinez and subfile CHCB-005-0004, pursuant to the Order entered by the Court on September 23, 2008 (Doc. No. 9292), and the Orders entered by the Special Master on September 24, 2008 (Doc. No. 9293) and October 1, 2008 (Doc. No. 9297).

The Court now FINDS:

1. Pursuant to the Orders of the Special Master entered on September 24, 2008 and October 1, 2008, Defendant Mario R. Martinez ("Defendant Martinez") was required to attend an evidentiary hearing in Santa Fe set for 1:30 PM on October 29, 2008.
2. Defendant Martinez failed to appear at the October 29, 2008 hearing.
3. Pursuant to the Order entered by the Special Master on September 24, 2008, no later than October 13, 2008, the State of New Mexico *ex rel.* State Engineer ("State") and Defendant Martinez were required to file with the Court and serve on the opposing party a short and precise

statement of their respective positions regarding the water rights claims and lands at issue, a list of documentary evidence each party intended to introduce at the hearing, the name and address of each person expected to be called as a witness, and exchange with the opposing party copies of the documentary evidence intended to be introduced at trial.

4. Defendant Martinez failed to comply with any of the requirements described in paragraph 3 above.

5. The Court's September 23, 2008, order states that Defendant Martinez' failure to comply with the Court's order and subsequent orders of the Court and Special Master would result in the entry of a Subfile Order incorporating the State's description of the nature and extent of Defendant's water rights. The Special Master's September 24, 2008, order states that the failure to comply with the order shall would be grounds for the entry of a Subfile Order incorporating the State's description of the nature and extent of Defendant's water rights.

6. Defendant Martinez failed to comply with the Orders of the Court and the Special Master, and there is no reason to delay the entry of a Subfile Order incorporating the State's description of the nature and extent of Defendant Martinez' water rights, as contained in the Order to Show Cause filed August 14, 2008 (Doc. No. 9261).

7. Defendant Sophia D. Martinez filed no objection to the State's description of the nature and extent of the water rights contained in the Order to Show Cause filed August 14, 2008 (Doc. No. 9261).

8. The Court has jurisdiction over the State of New Mexico *ex rel.* State Engineer, Defendants **MARIO R. MARTINEZ** and **SOPHIA D. MARTINEZ** ("Defendants") and the subject matter of this suit.

9. There is no just reason for delay for the entry of a final judgment as to the claims of the Defendants for irrigation water rights adjudicated by this order under Subfile CHRB-005-0004.

10. The rights of the Defendants to divert and use the public waters from the Rio Chama Stream System, Rio Cebolla, Section 3, for irrigation purposes under Subfile CHCB-005-0004 are set forth below:

Subfile No. CHCB-005-0004

A. IRRIGATED LANDS (Surface Water Only):

Office of the State Engineer File No(s) 01133 - 01167

Priority: Reserved for future determination by court order entered July 25, 2000

Source of Water: Surface waters of the Rio Cebolla, a tributary of the Rio Chama.

Purpose of Use: IRRIGATION

Point of Diversion:

Ditch Name: EMILIANA MAES SOUTH DITCH

Location X: 1,549,456 feet **Y:** 1,999,854 feet
New Mexico State Plane Coordinate System, Central Zone, 1983 N.A.D.

Location and Amount of Acreage:

<u>Township 26N, Range 03E, Section 12, N.M.P.M.</u>	
Pt. SE $\frac{1}{4}$	0.9 acres
<u>Township 26N, Range 04E, Section 07, N.M.P.M.</u>	
Pt. SW $\frac{1}{4}$	5.3 acres
Total	<u>6.2 acres</u>

As shown on the attached revised Hydrographic Survey Map for Subfile No. CHCB-005-0004

Amount of Water: Reserved for future determination by court order entered July 25, 2000

B. IRRIGATED LANDS (Surface Water Only):

Office of the State Engineer File No(s) 01133 - 01167

Priority: Reserved for future determination by court order entered July 25, 2000

Source of Water: Surface waters of the Rio Cebolla, a tributary of the Rio Chama

Purpose of Use: IRRIGATION

Point of Diversion:

Ditch Name: ATENCIO NORTH DITCH

Location X: 1,551,652 feet **Y:** 2,000,325 feet

New Mexico State Plane Coordinate System, Central Zone, 1983 N.A.D.

Location and Amount of Acreage:

<u>Township 26N, Range 04E, Section 07, N.M.P.M.</u>	
Pt. SW $\frac{1}{4}$	2.5 acres
	<hr/>
Total	2.5 acres

As shown on the attached revised Hydrographic Survey Map for Subfile No. CHCB-005-0004

Amount of Water: Reserved for future determination by court order entered July 25, 2000

C. NO RIGHT (Surface Water Only):

Office of the State Engineer File No(s) 01133 - 01167

Priority: NONE

Source of Water: Surface waters of the Rio Cebolla, a tributary of the Rio Chama

Purpose of Use: NO RIGHT

Point of Diversion:

Ditch Name: TRUJILLO - LOPEZ DITCH

Location X: 1,558,976 feet **Y:** 2,007,053 feet

New Mexico State Plane Coordinate System, Central Zone, 1983 N.A.D.

Location and Amount of Acreage:

<u>Township 26N, Range 03E, Section 12, N.M.P.M.</u> Pt. SE $\frac{1}{4}$	6.5 acres
<u>Township 26N, Range 04E, Section 07, N.M.P.M.</u> Pt. SW $\frac{1}{4}$	16.4 acres
Total	<u>22.9 acres</u>

As shown on the attached revised Hydrographic Survey Map for Subfile No. CHCB-005-0004

Amount of Water: NONE

11. Defendants have no irrigation water rights in the Rio Chama Stream System, Rio Cebolla, Section 3, other than those set forth in this order and those other orders entered by this Court in this cause.

12. Defendants, his or her successors, representatives, heirs and assigns, should be enjoined from any use of the public waters of the Rio Chama Stream System, Rio Cebolla, Section 3, except in strict accordance with the water rights described herein.

13. The water rights described herein are adjudicated subject to the right of any other water rights claimant with standing to object prior to the entry of a final decree.

IT IS THEREFORE ORDERED that the rights of the Defendants to divert and use the waters of the Rio Chama Stream System, Rio Cebolla, Section 3, are as set forth herein. The Defendants, his or her successors, representatives, heirs and assigns, are enjoined from any diversion or use of the public waters of the Rio Chama Stream System, Rio Cebolla, Section 3, except in strict accordance with the rights set forth herein or in other orders of the Court.

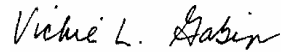
IT IS FURTHER ORDERED that the Court enters this Consent Order as a final judgment as to the elements of the Defendants' water rights set forth herein, subject to the right of other claimants

to file objections to individual adjudication orders, and to the entry of the final decree in this proceeding.



BRUCE D. BLACK
UNITED STATES DISTRICT JUDGE

Recommended for Approval:



VICKIE L. GABIN
SPECIAL MASTER